

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GERALD SHLESINGER,

Plaintiff,

vs.

BANK OF AMERICA, *et al.*,

Defendants.

2:11-CV-02020-PMP-PAL

ORDER

This action was removed to this Court on December 16, 2011 by Defendant Bank of America (Doc. #1). On December 23, 2011, Defendant Bank of America filed a Motion to Dismiss Plaintiff's Complaint (Doc. #4). The Court entered an Order (Doc. #14) granting defendant's motion to dismiss on February 3, 2012 as a result of Plaintiff's failure to timely respond thereto. However, after entry of the Court's Order the Parties filed a Stipulation for an Additional Extension of Time for Plaintiff to File a Response to Defendant's Original Motion to Dismiss (Doc. #15). On February 17, 2012, the Court entered an Order (Doc. #20) vacating the Court's earlier order granting Defendant's motion to dismiss and denying Defendant's motion to dismiss without prejudice to renew the motion in the event the Parties were unable to resolve the case by settlement.

On March 7, 2012, Plaintiff filed a Response in Opposition to Defendant Bank of America's Original Motion to Dismiss (Doc. #23).

1 On March 8, 2012, Defendant CTX Mortgage Company, LLC filed a
2 Motion to Dismiss Plaintiff's Complaint (Doc. #25) as well as a Joinder (Doc. #27)
3 in Defendant Bank of America's original Motion to Dismiss (Doc. #4).

4 On March 9, 2012, Plaintiff and Defendant Bank of America filed a Joint
5 Status Report (Doc. #26) regarding their efforts to resolve the case by settlement.
6 That report indicates that the Parties were continuing to exchange documents in an
7 effort to resolve the matter.

8 Following additional stipulations to extend time for Defendant Bank of
9 America to file a reply memorandum in support of its original motion to dismiss,
10 Defendant Bank of America filed a Reply Memorandum (Doc. #34) on April 30,
11 2012.

12 Having now read and considered Defendant Bank of America's fully
13 briefed Motion to Dismiss (Doc. #4) and Defendant CTX Mortgage Company's
14 unopposed Motion to Dismiss Plaintiff's Complaint (Doc. #25), the Court finds that
15 both motions should be granted for the reasons stated in those respective motions.

16 First, as noted in Defendant Bank of America's Motion and Reply
17 Memorandum, Plaintiff's Unfair Lending Practices Claim under NRS 589D, is time
18 barred by the applicable two year statute of limitations. Next, for the reasons set
19 forth in Defendant Bank of America's motion, Plaintiff fails to state a claim for
20 breach of the implied covenant of good faith and fair dealing under Nevada law.
21 Next, Plaintiff's claim for unjust enrichment is infirm because there is an express
22 contract in this case. Moreover, Plaintiff's Complaint fails to state adequate claims
23 for negligent and intentional misrepresentation or for fraud. Finally, Plaintiff's
24 claim for declaratory relief must fail because declaratory relief is a remedy not a
25 cause of action. In sum, Plaintiff's Complaint must be dismissed.

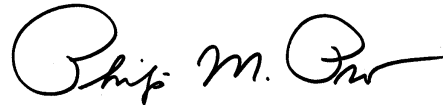
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1 **IT IS THEREFORE ORDERED** that Defendant Bank of America's
2 Motion to Dismiss (Doc. #4) is **GRANTED**.

3 **IT IS FURTHER ORDERED** that Defendant CTX Mortgage Company,
4 LLC's Motion to Dismiss (Doc. #25) is **GRANTED**.

5 **IT IS FURTHER ORDERED** that the Clerk of Court shall forthwith
6 enter judgment in favor of Defendants and against Plaintiff.

7 DATED: May 3, 2012.

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9 PHILIP M. PRO
10 United States District Judge
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